

## How many minimum stream flow water rights have been approved?

As of June 2002, there were 76 licensed or permitted water rights for minimum stream flows covering about 668 miles of streams and three minimum lake levels. This is less than 1% of the total stream miles in Idaho. A list of approved minimum stream flow rights can be obtained from the Department of Water Resources.

## Does a minimum stream flow stop development?

Unappropriated water in a minimum stream flow reach or upstream of a minimum stream flow reach remains available for new appropriation. No water right with a junior priority date can deplete the water needed to maintain the minimum stream flow unless allowed as a condition of approval of the minimum stream flow right.

## Can a stream with a minimum stream flow be dried up?

Yes. Water rights with earlier priority dates have the right to fill their needs before the minimum stream flow is satisfied. Senior diversions can legally dewater the stream in a drought year or when low flows occur, leaving no water for the minimum stream flow.

## How are water rights administered to maintain minimum stream flows?

Where a watermaster has been appointed, the watermaster will allocate the water in accordance with the priority dates for all water rights. The Department of Water Resources will administer the streams as necessary in areas where a watermaster has not been appointed.

## Idaho Department of Water Resources

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# IDAHO MINIMUM STREAM FLOW PROGRAM



## What is a minimum stream flow (or a minimum lake level)?

A **minimum stream flow** is the amount of flow necessary to preserve stream values, or the minimum lake elevation necessary to protect lake values. The water remains in a reach of a river or in a lake to protect fish and wildlife habitat, aquatic life, navigation, transportation, recreation, water quality or aesthetic beauty. Under Idaho law (*Chapter 15, Title 42, Idaho Code*) instream uses can be protected under water rights held by the Idaho Water Resource Board in trust for the people of the state of Idaho.

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## Why was the minimum stream flow law passed?

In 1978 the Idaho Legislature recognized the need to preserve stream flows for public health, safety, and welfare. The lawmakers also recognized that legal protection of the stream flows would help keep Idaho's water from being diverted and used out-of-state.

## What priority date is assigned to a minimum stream flow?

The priority date is the date the Idaho Water Resource Board minimum stream flow water right application is filed with the Idaho Department of Water Resources. Idaho law states that **“first in time is first in right.”** Therefore, all minimum stream flow rights are junior to rights with earlier priority dates. Minimum stream flow rights, however, are senior to rights with later priority dates. Water rights with earlier priority dates (senior rights) must be satisfied before rights with later priority dates (junior rights).

## How is the stream flow necessary to preserve values determined?

The minimum stream flow amount is the minimum - not the most desirable - flow or lake level necessary to protect the fish and wildlife habitat, aquatic life, water quality, recreation, aesthetic beauty, navigation or transportation. A water right flow is usually measured in cubic feet per second (cfs) while a lake level is measured in elevation (feet above mean sea level). One cfs is about 450 gallons per minute.

Like other water right applications, minimum stream flows are filed on unappropriated waters; those not used by earlier established water rights. The need for and the availability of the minimum stream flow must be certified by scientific methods.

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## Who can file for a minimum stream flow?

Only the Idaho Water Resource Board may file for a minimum stream flow water right. However, any person, association or government agency may make a request to the board to file an application on any stream in the state.

## What happens after the request is made to the Idaho Water Resource Board?

The board reviews the request and files an application with the Department of Water Resources if it determines a minimum stream flow may be desirable. The application describes the stream, the amount of water sought, purpose and location, and other information needed to satisfy the requirements of minimum stream flow water right.

Before the department processes the application, the board may hold public meetings in the locality of the requested minimum stream flow to gather information and to seek public input. Based on the input received at the public meetings, the board will decide whether to withdraw or modify the application, or to ask the department to process the application. Notice of the minimum stream flow application is then given by advertisement in local and regional newspapers and by direct notice to property owners and water right holders in the area. The notice will set the time and place for a public hearing by the department. At the public hearing, people have the opportunity to give their testimony in support or in opposition to the minimum stream flow. Following the public hearing, the director of the Department of Water Resources will issue an order denying or approving the application. The Director's order may approve the water right for the minimum stream flow in whole, in part, or with conditions.

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## What criteria must the minimum stream flow application meet before the director will approve it?

The application must satisfy several conditions established by law and it must be for a purpose recognized in the minimum stream flow statute. It must be found to be in the public (not private) interest. The right must not adversely affect senior water rights. It must be the minimum stream flow or lake level (not the optimum) needed to preserve fish and wildlife habitat, aquatic life, aesthetic beauty, navigation, transportation or water quality and it must be capable of being maintained.

## May the director's decision be appealed?

Yes, anyone who is a formal party at the hearing held by the department may request a rehearing or may appeal the decision to the District Court.

## What is the legislative role in the minimum stream flow process?

All minimum stream flow water rights approved by the director must be submitted to the Idaho Legislature by the fifth day of the next regular session. The minimum stream flow water right is deemed approved when the legislature affirms it by Concurrent Resolution. Should the legislature fail to act on any submitted minimum stream flow water right before the end of the regular session in which the right is submitted, by law the right is considered approved.

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